

(2004) 02 KAR CK 0071

In the Karnataka High Court

Case No : Writ Petition No's. 6079 to 6113, 6586 to 6597, 6712 to 6716, 7185, 7186, 7280, 7281, 7467, 7469, 7470, 7471, 7472, 7473, 7474, 7475 to 7479, 7480, 7894, 7909, 7910, 7912 to 7919, 7920, 7921, 7922, 8369, 5495, 6859 to 6909, 7468 and 7911 of 2004

Nimbappa and Others

APPELLANT

Vs

Registrar (Admission and Evaluation), Karnataka State Open University and Others

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Karnataka State Open University Act, 1992 — Section 10 A

Citation : (2005) 3 KarLJ 597 : (2004) 4 KCCR 376 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : J.S. Shetty, in W.P. Nos. 6079 to 6113, 6586 to 6597, 7185 and 7186 of 2004; Narayan V. Yaji, in W.P. Nos. 6712 to 6716, 7280, 7281, 7894, 8369 and 5495 of 2004, P.S. Manjunath, in W.P. Nos. 7467, 7469 to 7480, 7909, 7910, 7912 to 7922 and 7468 of 2004 and V.T. Rayaraddi, in W.P. Nos. 6859 to 6909 of 2004, for the Appellant; V. Narayana Swamy, for Respondent-1 in W.P. Nos. 7467, 7469 to 7480, 7909, 7910, 7912 to 7922, 6859 to 6909, 7468 and 7911 of 2004, for Respondents-1 and 2 in W.P. Nos. 6079 to 6113, 6586 to 6597, 7185 and 7186 of 2004 and for Respondents in W.P. Nos. 6712 to 6716, 7280, 7281, 7894, 8369 and 5495 of 2004 and Ashok Haranahalli, for Respondent-2 in W.P. Nos. 7467, 7469 to 7480, 7909, 7910, 7912 to 7922, 7468 and 7911 of 2004 and for Respondent-3 in W.P. Nos. 6079 to 6113, 6586 to 6597, 7185, 7186 and 6859 to 6909 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—Sri Ashok Haranahalli is directed to take notice for NCTE.

2. As the petitioners are seeking an interim order and the grant of the said interim order is dependent on the validity of their admission to the course itself, by consent of the parties, the matter is heard on merits and disposed of by this

order, as common questions of law and facts do arise for consideration in all these writ petitions.

3. Karnataka State Open University was established in the year 1994, under the provisions of the Karnataka State Open University Act, 1992, at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for co-ordination and determination of standard of such systems. With a view to facilitating hundreds of in-service teachers who are graduates or otherwise eligible for admission to the B.Ed. programme, the University offers an alternative pattern leading to a reasonably good professional degree. According to the scheme they need not take leave in the full academic year. As such, an alternative pattern of B.Ed. programme is designed. B.Ed. degree programme offered by the University is called "B.Ed. Through Distance Mode". However, the scheme of studies, the scheme of examination and the academic requirements of the course are, as per the guidelines of NCTE.

4. The Parliament enacted the National Council for Teacher Education Act, 1993, for the establishment of a National Council for Teachers Education with a view to achieve system of coordination through out the country, the regulation and proper maintenance of norms and standards in the Teachers Education System and the matter connected therewith (for short, hereinafter referred to as "NCTE Act"). Every institution offering or intending to offer a course of training in a teacher education on and after commencement of Act has to make an application to regional committee concerned for grant of recognition. Accordingly, the University has obtained the recognition from the NCTE. Appendix XIII which is framed by the NCTE in pursuance of the powers conferred under the NCTE Act and its regulations provide for norms and standards for B.Ed. degree programme through distance mode and distance learning system. The said norms provide that the B.Ed. course offered by the Open University will admit only those candidates who are working in the schools located in the territorial jurisdiction assigned by the University Act. The duration of the said course is 24 months excluding the time taken for admission. The basic unit of B.Ed. through distance shall take 500 seats. However, University may have additional seats in multiples of 100 subject to the maximum intake restricted to 1000 seats provided it makes available additional faculty and other instructional facilities as per norms. The eligibility and admission criteria is that the teachers serving in a recognised school with a Bachelor's degree and having at least two years experience are eligible for admission to the said course. The University shall develop a suitable procedure for the selection of the candidates. There shall be reservation of seats for SC/ST/OBC, handicapped, women etc., as per the Rules of the concerned Government. It also provides course development and delivery, qualification of teaching staff, study centres and the maximum students who could be allotted to a study centre, academic inputs, contact programmes, teaching practice, monitoring and supervision, fee structure and prerequisites for applying for grant of recognition of the programme.

5. Keeping in mind the aforesaid requirement, the University has prepared a hand book of 1998 for the B.Ed. degree programme which gives all the particulars regarding the course imparted by the University. Clause 3.1 of the said prospectus undertakes how a candidate should apply for the said course. The relevant portions which are relevant in deciding the case are that the fee should be paid only after receiving intimation letter from the University and along with the prepaid challan the candidate should send all the originals. After University approves the admission, the original marks cards will be returned to the students. The students are advised to take back the originals before teaching programme. The tuition fee, examination fee and other fees are to be paid in any of the Branches of the State Bank of Mysore by using the University challans only. Admissions made to any programme is provisional till the University approves it. Once the admission is received by the students they must pay the full fee on or before the last date prescribed by the University. If they failed to pay the fees within the prescribed period, they will loose the admission.

6. For the academic year 2001-02 the University received in all 6893 applications. Out of which 788 applications are from the teachers working in High Schools, 5488 are from teachers working in primary schools, 312 applications are from the teachers from other institutions and 305 are rejected as they are not submitted in terms of the Rules. The intake approved by the NCTE for the academic year 2001-02 was only 500. As against the same they have received applications 6893. As per Section 10, Sub-section (2) of the Karnataka State Open University Act read with Second Schedule of Sub-clauses (3) and (4) of the First Statutes, Vice-Chancellor is the Principal Academic and Executive Officer of the University. He shall exercise control over all the affairs of the University. Since the B.Ed. course is a professional course, in order to provide more transparency in the matter of admission to the said course, appointed an Admission Selection Committee and accordingly as per his order dated 30-3-2002 the Admission Selection Committee was constituted consisting of (i) Registrar (Admission and Evaluation) -Chairperson; (ii) Dr. M.K. Sachidanandan, the then HOD of education -Member; (iii) Dr. N. Lakshmi, Lecturer, DOS in Education - Member; (iv) Dr. H.L. Venkatesh, Deputy Registrar - Member and (v) Principal, Government College of Education, Mysore - Member. In terms of the norms and standards prescribed by the NCTE and the Governing Rules as applicable to the B.Ed. course, out of 500 seats 50% of the total seats i.e., 250 seats were earmarked for High School teachers, 125 for Primary School teachers and the remaining 125 seats for the teachers working in other institutions. Out of 500 seats, 15% of the seats in each category was reserved for SC, 3% for ST, 4% for Category I, 3% for physically handicapped, 3% for service and Ex-servicemen and the remaining 72% of the seats is reserved for OBC and General Category. On 14-6-2002, the Committee constituted for selecting the candidates considered the applications, kept the experience as the criteria for selection, and selected 500 students and sent admission notice to them making it clear that last date for admission is 28-6-2002 and in the event they do not get themselves

admitted before that date, they would forfeit the seats. As per the said notice sent they were requested to appear for Counselling along with the original certificates and they were given a day's time to pay the fees and the particulars of the fees were mentioned in the said notice itself. It was made clear that if they failed to attend the pre-admission Counselling, they would lose the chance and the said seat will be allotted to the next seat in the list as per the Rules. In terms of the said admission notice, only 330 students got themselves admitted. Therefore, a second round of admission was held for the remaining 170 seats. Similarly notice was sent to them fixing 26-7-2002 as the last date for admission. In the said round, 154 students got themselves admitted. Thus in all 484 students were admitted.

7. Six students who had discontinued studies earlier years got themselves registered for the academic year 2001-2002. Thus in all, 490 seats were filled up and no further steps were taken to fill up the remaining 10 seats.

8. The University has produced register showing the intimation letters sent to the selected candidates to I year B.Ed. course for the academic year 2001-2002. It shows the roll numbers of the candidate, receipts issued by the postal department for having received the registered letters. It also contains the list of the selected candidates and the category in which they were admitted and the number of years of service they have put in which is the criteria of being selected. All the students who attended the pre-admission Counselling were asked to affix their signature to the list maintained by the Committee. In the said Counselling they were asked to opt for a study center of their choice. Thereafter, they were asked to fill up the study center preference form which is duly signed by them. It is on the basis of their opting the study center, they were asked to take further instruction from the study centers which they have opted.

9. When things stood thus, the University received letter from the Vijayanagar College of Education which is run by Kanakadasa Education Society, which is one of the study centers at Hubli, informing the University that persons now were in charge of the study center on behalf of the University are indulging in malpractices, they are collecting money illegally in the name of their association, when the number of students earmarked for each study center is 100, in their study center there are 200 students studying and all those students possess challans showing that they have credited the amount to the University in State Bank of Mysore, Hubli Branch and in this regard they have been receiving complaints from students, their parents and therefore, they requested the Vice-Chancellor to look into the matter and take appropriate action. This letter is dated 3-9-2003 which is produced as Annexure-R1 in this proceedings. The Finance Officer of the University also brought to the notice of the Vice-Chancellor that on 5-6-2003, 643 students have credited money for B.Ed. course for academic year 2001-2002 and therefore, he brought to the notice of the Vice-Chancellor the excess intake in the said course. It appears, thereafter, after a preliminary enquiry the Vice-Chancellor issued notice to Dr. M.K. Sachidanandan,

Head of the Department, Department of Studies and Research in Education, bringing to his notice this excess admissions and his explanation. As per Annexure-R3 he admitted that there is excess admission, it is on account of serious lapse on his part which is in turn was on account of negligence on part of his staff and therefore, he requested the Vice-Chancellor to excuse him for the lapse so that he will not repeat the same mistake in future and also requested the Vice-Chancellor to approve this excess admissions.

10. Not being satisfied by the reply given by the Head of the Department, an enquiry was ordered. The Enquiry Officer examined the Head of the Department and the staff of his department and submitted a report to the effect that these excess admissions are all made by the Head of the Department illegally without authority and the University has been kept in dark about these admissions. The said report was placed before the Board of Management of the University and after considering the report the Board of Directors were of the view that these illegal admissions have to be cancelled, the money collected from them is to be returned and the said Dr. M.K. Sachidanandan should be kept under suspension forthwith and there should be an enquiry by a retired Judge. Accordingly, the said Head of the Department has been kept under suspension and in fact the University has entered Caveat before this Court, anticipating challenge to the said suspension order. They are in the process of appointing a retired Judge to enquire into these illegal admissions. In the mean while, the University by letter dated 16-1-2004 have requested the Principal Secretary to the Government, Higher Education Department, to order for a COD Enquiry regarding the irregularity in the admission to the B.Ed. Course during the year 2001-2002 and based on the COD Enquiry report, action could be initiated against the persons responsible for the irregularities. It is in pursuance of the said resolution of the Board of Directors the impugned communication addressed to these petitioners came to be issued which is in challenge in all these writ petitions.

11. The petitioners in all these writ petitions applied for being admitted to B.Ed. Course Degree Programme for the academic year 2001-2002 in pursuance of the representation made by the University as contained in the prospectus, book-let 2001-2002. Their grievance is, all of them received the communication from the University which is produced along with the writ petitions which is issued by the Department of Studies and Research in Education by the University for the 2001-2002, the letter of offer certifying that these petitioners have been admitted to the B.Ed. Degree Programme of the Karnataka State Open University during the year 2001-2002 and that they have been allotted a particular study center. It further states that the contact programme of I year B.Ed. will be held from 2-10-2002 to 3-10-2003 for a period of "4" weeks at different study centers. All these letters of offer almost are dated 28-2-2002. In the bottom it is mentioned that it is signed by the Chairman, Department of Research in Education. On receipt of these letter of offer, all the petitioners have paid the fees in prescribed challan either at the University Campus or at the respective place through Nationalised Banks. It is their case that immediately on receipt of

the said letters they made payment, they underwent the contact programme, they have been given identity cards. Subsequently, communication was sent to them calling upon them to pay the fee for second year which also they have paid, they have gone through the entire training programme as prescribed in the Regulations. In fact, they have also completed practicals. When they were about to take the theory exams these impugned communications have been sent to them by the University intimating that their admissions are illegal, it is made beyond the intake approved by NCTE and they are not entitled to take examination and they are at liberty to receive back the fees which they have paid. In the said communication, it is also informed that the Boards, of Management of the University has taken action to treat all these students have not been admitted regularly and therefore, they are not entitled to take the examination.

12. The University has filed its counter contending that none of these petitioners were selected by the University for the B.Ed. course for academic year 2001-2002. They were not intimidated about the selection nor required to appear before the Pre-Counseling Committee. All the documents produced by them are all false, fabricated with the connivance of the then Head of the Department. The annexures produced by the petitioners in support of their case in fake and not genuine documents and therefore petition based on fake documents is liable to be dismissed with exemplary cost. They have also, set out the number of applications they have received, the constitution of the committee to consider the selection, the basis on which the selection were made, the mode in which the seats were allotted to various category of persons according to the Government Rules and the number of students who actually took admissions. They have also set out the irregularity committed by the Head of the Department, the complaints received by the University, the enquiry held by them, the finding of the enquiry and the action taken to cancel these admissions. They also contend that 500 is the intake fixed by the NCTE for the University and any admission in excess of the approved intake would result in withdrawal of the recognition given to the University and therefore under no circumstances the University can absorb these illegal and extra admissions made by the Head of the Department without authority.

13. The learned Counsel for the petitioners assailing the action of the University in denying admissions, approval of admission and consequent permission to take the examination which is scheduled to be held from 28-2-2004 contend that the documents such as letter of offer sent by the University to all these petitioners, payment of fee, issue of identity cards, issue of letter calling upon them to pay the second year fee and the correspondence which they have produced clearly establish that all these petitioners were also validly admitted to the said course and stops the respondent from contending to the contrary. In the prospectus which is published by the University nowhere there is mention of total number of seats for which the applications were called for. The norms and standards for B.Ed., formulated by the NCTE clearly go to show that 500 seats is the minimum

and in a given case, it can be upto 1000 with multiples of 100 and even that 1000 also can be enhanced. Therefore, on that ground their admissions cannot be disapproved. The prospectus do not provide the mode of selecting the students. Petitioners have been completely kept in dark, therefore, it is not open to the University to contend now that as the petitioners did not appear before the Selection Committee and they did not go through the procedure which they have prescribed, that would invalidate the valid admission of the petitioners. Under the Act, the Board of Management, has no power in the matter of admissions and therefore the resolution passed by the Board of Management cancelling the admission of the petitioners is one without jurisdiction and therefore it cannot be sustained. In the impugned communication it is pointed out that the petitioners are also party to the unauthorised, illegal and invalid admissions. Such a finding is recorded without hearing the petitioners without holding any enquiry and therefore on the ground of violation of principles of natural justice, the impugned communication is liable to be quashed. In the absence of any procedures prescribed for admission, when admittedly the Head of the Department of Education has sent communication informing the petitioners regarding their admission which has been acted upon by receipt of fees, issue of identity cards, calling upon them to pay the fee for the second year permitting them to take the examination, it is not open to the University to contend that the petitioners' admissions are invalid or illegal. Lastly, it was contended that even if it is held that these admissions are in excess of the intake, the provisions of the NCTE Act are only directory and not mandatory and therefore it is open to the Court to issue appropriate directions either for enhancement of the intake for the academic year 2001-2002 or for approving the admissions of these petitioners. All the petitioners are teachers who have put in more than 2 years of service in respective schools who wanted to pursue this B.Ed. Course to brighten their prospectus are innocent and they have parted with their hard earned money, they have undergone the training for two years and at this length of time, if their admissions are cancelled, they are prevented from taking the examination, it would be unjust, inequitable and this Court should go to their aid in exercise of its equitable jurisdiction and grant relief sought for.

14. Per contra, the learned Counsel appearing for the University contended that the material on record clearly discloses that these petitioners were not admitted by the University. Once they are not admitted no right is accrued to them. Therefore, the question of hearing them before informing them about the invalidity of their admission would not arise. The statement of the Head of the Department clearly discloses that these petitioners were illegally admitted by him. The documents on which the petitioners have based their claim are all fabricated document, which have not originated from the University officially. If at all it is originated from the office of the Head of the Department, it has no value in the eye of law. As against nearly 5500 students who are not selected if only 158 students have been picked up by the Head of the Department to admit, it is for the petitioner to explain why they have been preferred and for what

benefit the Head of the Department sent the communications on which they rely upon. Therefore, when they are the beneficiaries of fraud, they are not entitled to any equitable relief at the hands of this Court. They have no right to maintain these writ petitions, as documents on which they are basing their claim are all fake and fabricated documents. Admittedly, all the petitioners did not appear before the committee for Pre-Counseling, they have not put their signature in the list maintained by the Committee, they have also not filled up the form prescribed for opting the study center and in that view of the matter, as these petitioners were not admitted by the University no injury much less irreparable injury is caused to any of these petitioners which requires to be remedied by this Court. The Board of management of the University being the highest authority under the Act is empowered to exercise powers regarding matters for which no specific provision is made. They being very much interested in maintaining discipline, control and good name of the University, on the basis of the material which was made available to them have rightly come to the conclusion that these illegal admissions have to be investigated and appropriate action has to be taken against the guilty. In fact the University has shown their bona fides by keeping the Head of the Department under suspension and have entered caveat before this Court in the event of the said order being challenged and they also requested the Government of Karnataka to initiate COD enquiry to find out the role of each and every one in this scam. Under these circumstances, the University has acted bona fide and no mala fides could be attributed to them and it is a question of maintaining the good name and standards in Teachers Education and therefore he submits that a case for judicial review of the action taken by the University is not made out.

15. The learned Counsel Mr. Ashok Haranahalli, representing NCTE, brought to my notice the various provisions of the NCTE Act, the rule making power of the Council, the regulations framed therein and contended that no writ could be issued by this Court to contravene the law, as writs are issued only for enforcement of law.

16. From the aforesaid facts and rival contentions the only point that arise for my consideration in these batch of writ petitions is:

"Whether the petitioners are validly admitted to the B.Ed. degree programme of 2001-2002 by the University. If so, to what relief they are entitled to?"

17. The claim of all the petitioners emanates from the letter of offer which they have received from the University. It is to be stated herein that all these letters of offer are in printed form, it is dated 28-6-2002. In some cases it has been struck off and handwriting dates are mentioned. In one of the cases, the letter of offer sent to M.Ed. Degree Admissions are made use of striking of M.Ed. and replacing by B.Ed. in the handwriting and date of that letter of offer is 8-4-2002. It is in the case of S.C. Shanawad, which is produced as Annexure-C26. Therefore, it is necessary to see the contents of this letter of offer, which is the document on which the claim of all these petitioners are based. It reads as under:

M.Ed. Admissions 2001-2002 Letter of Offer

This is to certify that Smt./Sri S.C. Shanawad Bearing Roll No. 5061 has been admitted to the M.Ed. Degree Programme of the Karnataka State Open University during the year 2001-2002.

She/He has been allotted to Hubli study centre.

The Contact Programme for the First Year M.Ed. will be held from 15-5-2002 to 29-5-2002 for a period of 15 days at different study centre.

Mysore Chairman, 8-4-2002 DOS in Education

18. In contrast to this letter of offer I have on record the communication sent to 500 students selected by the University by the committee constituted for selection which is produced as Annexure-R9.

"No. KSOU/EDN/B.Ed.ADMN./2001-2002

Date: 18-6-2002

Temporary Roll No

Dear Applicant,

Sub: B.Ed. Admissions 2001-2002

You have been provisionally selected for admission to B.Ed. Degree Programme of Karnataka State Open University during the year 2001-2002. You are requested to appear for a Pre-admission Counselling to be held on Thursday, 27th June, 2002 and Friday, 28th June, 2002. You are hereby informed to report at 11.00 AM on 28th June, 2002 at Manasa Block (Room No. M-134) of Karnataka State Open University Campus, Mysore. During this Counselling, your original certificates will be verified and you would be provisionally given admissions on payment of the prescribed fee. If your certificates are in order, you will have to pay the following fees on Friday, 28th June, 2002 at State Bank of Mysore, KSOU Campus Branch and handover the triplicate of the challan to the office for registering your name in the Admission Register. If you fail to attend the Counselling on Thursday, 27th June, 2002 or remit the fees on Friday, 28th June, 2002, you will be forfeiting the chance for getting admission to B.Ed. Degree Programme. The fee details as shown below:

Tuition Fee Rs. 7500/- Activity Rs. 2500/- Registration Fee Rs. 150/- Eligibility Fee Rs. 600/- (In case of candidates who passed their degree/Post- Graduate Examinations from the Universities outside Karnataka State)

While coming for the Counselling, you are requested to bring the following documents:

1. Degree/Post-graduate Examination Marks Card in original with two Xerox copies.
2. Service Certificate in original with two Xerox copies.
3. Certificate for claiming reservation under SC/ST/C-1/PH/Ex-Service/Defence.
4. T. C. or Migration Certificate in original if you have already obtained.
5. Three pass-port size photographs.

If you fail to attend the pre-admission Counselling as per the above schedule, you will be losing the chance for admission to B.Ed. Degree programme and no second chance will be given to such candidates. If such vacancies occur, it will be allotted to the next candidate in the list as per rules. Therefore, you are hereby informed to attend the above Counselling without fail.

With regards,

Yours Sincerely, (M.K. Sachidanandan) Chairman"

19. Annexure-R9 which is the official communication, discloses that the students were told that they have been provisionally selected for admission to B.Ed. Degree Programme and they were requested to appear for pre-admission Counselling and they were asked to report at 11 a.m. at Manasa Block, Room No. M-134 of the University. They were informed that, "during this Counselling their original certificates will be verified and they would be provisionally given admissions on payment of prescribed fee. If their certificates are in order, they have to pay the fees mentioned therein on Friday, 28th June, 2002 at State Bank of Mysore, KSOU Campus Branch and handover the triplicate of the challan to the office for registering their name in the Admission Register". Further they were informed that if they fail to attend the Counselling or remit the fees, they will be forfeiting the chance of getting admission to B.Ed. Degree programme. Even particulars of fee to be paid under different heads are indicated. They were also requested to bring the documents mentioned therein while coming for Counselling. In fact, it was made clear that if they fail to attend the pre-admission Counselling as per the schedule mentioned in the said communication, they will be losing the chance for admission to B.Ed. Degree Programme and no second chance will be given to such candidates. If such vacancies occur, it will be allotted to the next candidate in the list as per rules. The letter is signed by M.K. Sachidanandan, Chairman of Department of Studies and Research in Education.

20. A reading of this communication clearly discloses that the students were informed that they were provisionally selected. They were expected to appear before the pre-admission Counselling. After verification of the certificates they would be given admission provisionally on payment of prescribed fee. After payment for which 24 hours time was granted, they were expected to hand over the triplicate of the challan to the office for registering their name in the admission register. Therefore, this is the procedure prescribed by the University

for admission. As against this, the communication received by the petitioners is titled as letter of offer. It states that this to certify that the candidate to whom it is addressed has been admitted to B.Ed. Degree Programme of the University and that the candidate has been allotted a particular study center. It also intimates about the contact programme to be held from 2-10-2002 to 30-10-2002 for a period of four weeks. It is signed by the Chairman, Department of Studies in Education. Therefore, it is clear that even before the students have paid the fees, this communication certifying the said students having been admitted is issued. Whether the student is really interested or not and without consulting the student the University has assigned a particular study center and they were called upon to attend the contact programme for the period from 2-10-2002 to 30-10-2002. A reading of this two documents makes it very clear that the aforesaid document relied on by the petitioners is a spurious one, not emanating from the University Officially.

21. In order to find out whether the students have been taken for a ride and have not taken part in this irregularity, I have made a comparison of these letters of offer, the date on which payments were made and the case pleaded by them in the respective petitions to make sure that no innocent students career should be harmed by this Court.

22. The averments in the writ petition in W.P. Nos. 6079 to 6113 of 2004 which is relevant for this purpose reads as under:

"In pursuance of the said letter of allotment, the petitioners have immediately admitted and joined the study centres of the second respondent and pursued their studies. They have also attended the induction programme of two days at the second respondent-University campus at Mysore. There afterwards the petitioners have also attended the first contact programme held in the respective study centers, as stated in the letter of offer by the second respondent and Annexures-E1 to E32 are the challans showing payments made".

23. In W.P. Nos. 6859 to 6909 of 2004, the averments in this regard is as under:

"Under this background and after going through the prospectus issued by the 1st respondent for the academic year 2001-2002, all the petitioners approached the 1st respondent seeking for admission. Accordingly, all the petitioners came to be admitted to the said course of B.Ed. for the academic year 2001-2002 and all the petitioners paid the necessary admission fee for the term. In pursuance of the admission, the 1st respondent issued a letter of offer admitting all the petitioners to the B.Ed. course/degree programme for the academic year 2001-2002. Accordingly, the 1st respondent allotted Hubli as study centre to undergo 1st year course for all the petitioners".

24. In W.P. No. 7922 of 2004, it is pleaded as under:

"Accepting the application filed by the petitioner, the petitioner was issued with a letter of offer bearing No. KSGU/Edn./B.Ed./ABC/2001-2002, dated 28-6-2002

signed by the Chairman of the Department of Studies and Research in Education intimating the petitioner that a temporary roll number has been given to the petitioner and has been admitted to the B.Ed. Degree Programme for the year 2001-2002 and is allotted to the Gulbarga Study Centre. It was further informed that the contact programme for the first year B.Ed. Course from 20-10-2002 to 30-10-2002 for a period of four weeks at different study centre. A copy of the said letter of offer is produced herewith and marked as Annexure-A".

25. Annexure-A produced along with the writ petition shows the date 28-6-2002 struck off and in that place 12-12-2002 is written. Second paragraph of the letter is struck off.

26. In W.P. Nos. 7280 and 7281 of 2004, it is pleaded that petitioners submitted their application for the admission to the said course in the first respondent-University for the academic year 2001-2002. The petitioners have taken admission for B.Ed. Course and accordingly, the respondents 1 and 2 accepted the prescribed fees from the hands of the petitioners.

27. The challans produced in some of the cases and the statement produced by the University showing the date on which all these petitioners have made payments towards fees, clearly shows that in most of the cases the payments were made in the month of December, January and thereafter. In other words, after this communication was received by the petitioners on June or July, the payments are made in the month of December, January and February. But from the aforesaid pleadings, some of the petitioners are contending that after the payment of fees this letter of admission is issued to them and some has pleaded that immediately after the receipt of letters they have made the payments. The documents produced by them speaks for themselves. One of the student has gone to the extent of tempering with the date and striking off the third paragraph in the admission letter as in that case the payment is made by the student on 12-12-2002 by which time the contact programme for the 1st year B.Ed. Course between 2-10-2002 to 30-10-2002 was over.

28. In this background, the statement of Head of the Department made in reply to letter of Vice-Chancellor and in the course of enquiry assumes importance. He in categorical terms admits that he and his department has committed a mistake. He wants the authorities to excuse him so that he will see to it that in future no such mistake is repeated. It is to be noticed that this Head of the Department was the member of the Committee constituted by the Vice-Chancellor to make these selections. All the selections and admissions made by the University were over by 28-6-2002. These communications on which the petitioners rely on is dated 28-6-2002 and they have made payments as is clear from the statement produced by the University in October, November, December and January. Under these circumstances, it cannot be said that petitioners are all innocent students and they have been fooled by the Head of the Department and they are not party and privy to these irregularities.

29. In this context if nearly more than 5500 students were denied admissions how these 158 students and for what purpose the Head of the Department picked them upto admit them, is a matter which is to be taken note of. He admits the mistake committed by him. He admits that his office was negligent. The question is for what earthly benefit this Head of the Department and his staff got admissions to these 158 persons, and in what way they are benefited. But one thing is clear. By these 158 admissions, all these petitioners are benefited. They are the beneficiaries of this illegal action. But for this illegal admission they are not found eligible for admission by the University. If they have managed to secure the admission in this illegal way, the finger points at them. It is for them to explain. One thing is certain. They are not innocent. Now the COD enquiry requested by the University probably would reveal the role of these petitioners in these illegal admissions. But suffice it to say, so far as this case is concerned, the material on record clearly shows that they are party to these illegal admissions. They are the beneficiaries of these admissions. They have deliberately made false statement in the writ petitions. The statements made in the writ petitions are contrary to the documents on which they rely on. Therefore, the cumulative effect of these circumstances and the material on record clearly shows that the petitioners have not come to the Court with clean hands. They are trying to get these illegal admissions regularised through the judicial process which is totally impermissible.

30. In dealing with similar situation, this Court in the case of Harish Vs. University of Agricultural Sciences, , has held as under:

"When the marks as entered in the register maintained by the Pre-University Board tally with the marks report of the Principals of respective Colleges and do not tally with the marks cards produced the petitioners, it is obvious that the marks card produced by the petitioners do not reflect the true position as regards the marks secured by them at the qualifying examination. It must necessarily be a fake marks card. It is true that there is no direct evidence as to the actual perpetration of the fraud by the petitioners. However, the fact remains that they are the beneficiaries of fraud, by whomsoever it might have been committed. From the facts, it is clear that the petitioners produced a marks card as the genuine and the petitioners did not have any reason to believe it to be genuine. The said marks card were produced in order to gain admission to a professional course. The University having believed the marks cards to be true and genuine admitted the petitioners. In these circumstances, it is not necessary that action should be taken only against the persons who are parties to the fraud, even the beneficiaries of such fraud are also liable for appropriate action".

31. In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , the Supreme Court has held as under:

"From this legal setting we have to consider whether the inference deduced by the Education Standing Committee that the fabrication of moderators" marks sheets was done at the behest of either the examinee or the parent or guardian

is based on the evidence on record. It is already found that the examinees admitted the forgery of marks to their advantage. The fabrication of the moderators' marks sheets was done after the scrutiny by the concerned officials in the office of the State Board at Bombay and before the moderators' mark sheets were taken out to Pune to feed the computer. Why one is expected or interested to wade through eighty thousand moderators' mark sheets to locate only the 283 examinee or parent or guardian approached the fabricator; gave the number and instructed him/them to fabricate. The act of fabrication is an offence. Merely that it was done in one subject or more than one makes little difference. Its gravity is not mitigated if it is committed in one subject alone. This is not an innocent act or a casual mistake during the course of performance of the official duty as is sought to be made out. It was obviously done as a concerted action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent's guardian behest. It is therefore, clear that the conclusion reached by the Education Standing Committee that the fabrication was done at the instance of either the examinees or their parents or guardians is amply borne out from the record. The High Court in our view overstepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its own conclusions on the specious plea of satisfying "conscience of the Court" .

32. This Court in the case of Sharin Dhiman Vs. The Common Entrance Test Cell and Others, , has held as under:

"Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper overall these centuries. Fraud affects the solemnity, regularity and orderliness of any examination conducted or evaluation of marks in the said examination, which is the basis for seeking an admission into a professional course. When once fraud is established, proved or admitted the question of the Courts taking a human or sympathetic consideration and allowing the student to retain the benefit of fraud and continue his education would not arise. The students who are prepared, to start their academic career by indulging trickery and deceitful means, can expect no sympathy from this Court. Such students would destroy the fabric of the society and it is desirable that such students be weeded out from the education field, at the earliest, so as to create confidence in the genuine students that the education imparted in this country is to bring out honest citizens. Unduly lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalized in Courts of law. Courts do and should take human and sympathetic view of the matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, engender cynical

disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity, that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Court into private benevolence. This tendency should be stopped. Where fraud is established, the Courts have no jurisdiction to condone the said fraud on any pretext whatsoever and grant relief to the litigant who has approached the Courts. The fraud disentitles the person approaching the Courts from any relief.

33. The Supreme Court in the case of *Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others*, , dealing with the right of the delinquent to be heard before imposing penalty has held as under:

"In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the burnt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution".

34. In the background of these judicial pronouncements it is clear that material on record clearly discloses that the documents on which the petitioners rely on is the basis for claiming right of admission did not emanate from the University. The Head of the Department who is the author of the said document has in unequivocal terms admitted the irregularity in making the admissions of the petitioners. He also admits that his staff was responsible and they were negligent in this behalf. The Committee constituted by the Vice-Chancellor to go into these irregularities prima facie has recorded a finding that the explanation offered by the Head of the Department is not satisfactory. They have also recorded a categorical finding that the petitioners are not duly admitted. The challans which are produced by these petitioners clearly demonstrates that they have not made the payments immediately on receiving the so-called intimation of admission. They have pleaded in the writ petition the facts which are not true to record. But for these documents on which they rely on, they had no chance of being admitted to the said course. They are undoubtedly the beneficiaries of these documents which are not genuine. In fact, it is not a case of the University cancelling the admission made validly or on misrepresentation or on the basis of fraud. It is a case of no admission at all. If there is no admission in accordance with law, petitioners acquire no right and therefore, the question of hearing the petitioners before informing them about the consequences of their act would not amount to violation of principle of natural justice. It is not a case of admission of a student being cancelled. It is a case of not recognising the admission of 158 students who are admitted by the Head of the Department illegally and in active

connivance with his staff. The petitioners are not illiterates. They are all graduates working as teachers in various institutions and have put in more than two years of service. The prospectus on which they rely on had indicated to them who are the authorities of the University, when they have to pay the examination fees, where they have to pay the examination fees and the mode in which it is to be paid. In spite of all these, if they have chosen to act on the intimation alleged to have been sent to them, which from the material on record is not genuine and if they have chosen to make the payments as contended by them at their leisure, they cannot plead ignorance or any other equitable considerations to condone their lapses. They have deliberately made statements in the writ petition which is duly supported by verifying affidavit knowing it to be false. They are demonstrated to be false from the very document on which they rely on in these proceedings. Therefore, when admittedly, these petitioners are the beneficiaries of these fraudulent acts, the question of Court taking sympathetic consideration and allowing a student to retain the benefit of fraud and continue his education would not arise.

35. All these petitioners are teachers by profession. Their anxiety to improve their prospects by acquiring a degree in B.Ed. in Education is understandable. But means of achieving the same should be as pure as the profession to which they belong. They cannot try to improve their academic career by indulging in trickery and deceitful means. If they so choose to do they cannot expect any sympathy from this Court. This conduct of the petitioners, if upheld, would destroy the fabric of the society because they are the persons who are going to guide the future generations.

36. Insofar as the contention that the University has not produced any material to show how these admissions of the petitioners are made is concerned, the material on record clearly discloses the mode in which the admissions were made to the aforesaid courses. The candidates who are selected on the basis of their experience were informed to attend preadmission counselling on the date stipulated in their admission tickets. Students appeared in terms of the said dates. Their original certificates were verified and they were provisionally admitted and they were called upon to pay the prescribed fee. On payment of the prescribed fee they were expected to submit the challan in triplicate to the authorities and thereafter the names of those students were written in the admission register. University has produced records such as notice sent to the students, postal receipt evidencing that such notices were sent, the documents showing that the students who appeared before the pre-admission counselling were asked to sign the list maintained by the University and thereafter the students were called upon to mention the Center which they have opted by filling up the prescribed application and it is thereafter they were granted admission and in the admission register their names were entered. Admittedly, none of the petitioners have undergone these procedures which are followed by the University in admitting the students. It was contended that prospectus issued by the University did not prescribe the mode of admission and that the petitioners

were totally unaware of the procedure which the University has followed and the same having not been duly intimated it cannot be said that the petitioners are not validly admitted. Merely because the procedure for admission is not prescribed in the prospectus issued that would not validate the admissions of the petitioners. The Vice-Chancellor has formed a Committee to consider the applications received and such Committee after scrutinizing the applications has followed the procedure to admit the students. When admittedly these petitioners have not undergone the said procedure, it cannot be said that the petitioners were admitted by the University for the aforesaid course. Therefore, I do not find any substance in the said contention.

37. Next it was contended, the Board of Management of the University has no power to cancel the admissions and it is the Academic Council which is duly authorized to cancel the admissions. Sub-clause (3) of Clause (8) of the II Schedule to the University Act categorically provides that the Board of Management shall exercise all the powers of the University not otherwise provided for by the Act, Statute, Ordinance and Regulations for the fulfillment of the objects of the University. Therefore, the Board of Management is the highest authority in the University, has been conferred with such powers. The malpractice which is noticed in the University is of alarming proportion. The Head of the Department of the University has involved in these illegal activities. Under those circumstances, when the authority itself was a party to this illegality it could not be detected at the earliest point of time. It is only on receiving a complaint from one of the Education Society which is running the study center and after the Accounts Department pointed out that the amount standing to a credit in that particular account is in excess, the authorities have opened their eyes, made enquiries and then they detected this illegality. A Committee was constituted to look into the matter and after investigation the committee submitted its report. Under these circumstances as it concerns the University, its reputation and the interest of the students at large, the Board of Management which is the highest authority under the Act was fully competent to take note of these illegalities and pass resolution not to give benefit to these illegalities to the petitioners and further directed the authorities to initiate proper action against the concerned persons. In fact, they have gone one step further and have requested the Government to handover the entire investigation to the COD. Under these circumstances, it cannot be said that the order of the Board is one without jurisdiction and requires to be quashed.

38. Insofar as the contention that the intake fixed for NCTE is not conclusive and the very regulation on which they rely provides for enhancement of intake, and the University has necessary infrastructure for this additional intake and all that the University has to do is to make application to the NCTE to request for enhancement is concerned, it is not for the petitioners who have indulged in illegality to dictate terms to the University. For the academic year 2001-2002 NCTE has fixed the intake at 500. Based on the said intake admissions have been made. It is not a case of admitting students in excess of intake as wrongly

understood by the University. The University has not made any admission in excess of the intake. These illegal admissions, if they are taken into consideration, then it would result in excess of the approved intake. Therefore, the entire argument based on the assumption that it is a case of admission in excess of the intake is without any substance.

39. Insofar as the contention that this Court in appropriate cases can issue direction to the University of NCTE to enhance the intake and approve admissions is concerned, if such a course is adopted it would run counter to the law and the law declared by the Supreme Court. Repelling the said contention the Supreme Court in the case of K.S. Bhoir Vs. State of Maharashtra and Others, , has held as under:

"The increase in admission capacity is permissible only when the scheme in accordance with the regulations is submitted by the Medical College u/s 10-A of the Act to the Central Government and the Medical Council is satisfied that the scheme complies with the requirement of the Act and regulations and thereafter the Medical Council recommends for such an increase in admission capacity. So long as the requirements u/s 10-A of the Act are not complied with, no permission can be granted by the Central Government. If any direction is issued by the High Court to the Central Government to increase the admission capacity in a Medical College it would be in the teeth of the statutory provisions and amounted to amending the provisions of Section 10-A. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law.

It is no doubt true that large number of students who were already admitted in medical/dental colleges and who had incurred a lot of expenditure in taking admissions were to be dislodged because of the mistake committed by examiners and consequent issue of the revised merit list. The permission to increase the intake capacity was sought by the State in the extraordinary circumstances. As yet no direction to the Central Government to grant one time increase in the admission capacity in the medical college, could be issued by the High Court. In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, the compassion and sympathy has no role to play where a rule of law is required to be enforced. Adjusting equities in exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council u/s 10-A of the Act is different thing. The refusal by High Court to issue direction to the Central Government was therefore proper".

40. The aforesaid law was stated by the Supreme Court in a case where a valid admission was made and the students for no fault of their own were disqualified. Even in such cases it was held compassion and sympathy has not role to play

where a rule of law is required to be enforced. In the instant case the University has not made any admissions in excess of intake. Petitioners are at fault. They have tried to overreach and manipulate and they have colluded with the Head of Department in getting themselves admitted on the basis of documents which are not genuine to their knowledge. Therefore, the question of this Court showing any sympathy or compassion to such students would not arise. Rule of law is required to be enforced. Under these circumstances, it is impermissible for the Court to issue any direction either to the University to seek for enhancement of intake or to the NCTE to fix a higher intake for the University to mitigate the hardship that is likely to be caused to the petitioners herein.

41. Insofar as the contention that the fixation of intake under the provisions of NCTE is directory and not mandatory is concerned, petitioners have no role to play in this regard. Applying for intake, fixing of intake is exclusively within the jurisdiction of the University and the NCTE. A student has no say in the matter. Under the circumstances. I do not find any substance in the said contention.

42. The aforesaid facts clearly demonstrate that the procedure adopted by the University is not transparent but also wanting in many aspects. May be the University is in its nascent stage. They lack required experience to conduct selection process. They should learn from the past mistake. It is high time the University would take note of the way in which these admissions are manipulated and evolve a fool proof system with assistance of professionals for the coming years to maintain transparency. It is also necessary for them to publish in the prospectus which are issued to the students the selection process so that in future students do not complain that the selection process is not made public or that they are not made aware of the procedure adopted by the University.

43. Under the circumstances I do not find any merit in any of these writ petitions. Accordingly, writ petitions are rejected.

44. Irrespective of the conduct of these petitioners, if the petitioners choose to apply for admission to B.Ed. course for the current year, the University shall consider their applications on merits and in accordance with law without in any way being influenced by the observation made by this Court in this order or the resolution of the Board of Management of the University.